MEMORANDUM

IN RE

WHITE-SLAVE TRADE

Printed by order of
Committee on Interstate and Foreign Commerce

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MEMORANDUM REGARDING WHITE-SLAVE TRAFFIC.

AS TO VALIDITY OF PROPOSED ACT.

It is no longer open to question that the transit of individuals from State to State is interstate commerce. The statement in Mayor *v.* Miln (11 Pet., 102) that persons are not the subject of commerce was overruled in the Passenger Cases (7 How., 429, 432, 436) in the opinion of Justice Wayne, holding that the statement to that effect in the Miln case was dictum and was not adopted by the majority of the court. (See further, Mobile County *v.* Kimball, 102 U. S., 692; Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 196; Pickard *v.* Pullman Southern Car Co., 117 U. S., 34; Covington & C. Bridge Co. *v.* Kentucky, 154 U. S., 204.) Indeed the mere transit of persons arriving at our ports of entry is without reference to traffic the subject of congressional regulation, because it is commerce. (Head Money Cases, 112 U. S., 580; Nishimura Ekiu *v.* U. S., 142 U. S., 651.) The same must be true of the transit of persons from State to State, assuming that foreign commerce is the same as interstate commerce, with the exception of the locus in quo.

Congress, therefore, having the power to regulate the transportation of persons in interstate commerce, it remains to be considered whether or not the proposed regulation is concerning a matter directly connected with interstate commerce or only remotely connected with it. In determining this the same tests are applicable as those which are pertinent in considering the transportation of property in interstate commerce. As stated in The Lottery cases, 188 U. S., 321, 357:

> As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the "widespread pestilence of lotteries" and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another. In legislating upon the subject of the traffic in lottery tickets, as carried on through interstate commerce, Congress only supplemented the action of those States—perhaps all of them—which, for the protection of the public morals, prohibit the drawing of lotteries, as well as the sale or circulation of lottery tickets, within their respective limits. It is said, in effect, that it would not permit the declared policy of the States, which sought to protect their people against the mischiefs of the lottery business, to be overthrown or disregarded by the agency of interstate commerce. We should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, can not be met and crushed by the only power competent to that end. We say competent to that end, because Congress alone has the power to occupy, by legislation, the whole field of interstate commerce. What was said by this court upon a former occasion may well be here repeated: "The framers of the

Constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject-matter specifically committed to its charge." (*In re Rahrer*, 140 U. S., 545, 562.) If the carrying of lottery tickets from one State to another be interstate commerce, and if Congress is of opinion that an effective regulation for the suppression of lotteries, carried on through such commerce, is to make it a criminal offense to cause lottery tickets to be carried from one State to another, we know of no authority in the courts to hold that the means thus devised are not appropriate and necessary to protect the country at large against a species of interstate commerce which, although in general use and somewhat favored in both national and state legislation in the early history of the country, has grown into disrepute, and has become offensive to the entire people of the nation. It is a kind of traffic which no one can be entitled to pursue as of right.

Certainly in the case of lotteries there is nothing harmful in the mere transportation of the pieces of paper. The injury resulted from the connection which existed between those tickets and the entire scheme of the lottery. It was the purpose for which the tickets were used which made them an instrument of injury to the public.

The sections above proposed have been so drawn that they are limited to cases in which there is the act of transportation in interstate commerce of women for purposes of prostitution. The use of interstate commerce in sending prostitutes from one State to another in connection with this traffic in women would seem to be as directly connected with interstate commerce as the sending of tickets from one State to another in furtherance of the operation of a lottery. It is true the act of prostitution is not committed in connection with the interstate transportation nor was the drawing in connection with the lottery a part of interstate commerce.

The sections proposed do not amount to an interference with the police power of the State. The simple test, as pointed out in the Rahrer case and in the Lottery cases, is whether or not the State, in the exercise of its police power, could have prohibited the things at which the act is aimed. Manifestly a State could not enact that a person who induced a woman to go from one State to another for purposes of prostitution should not aid or assist in her transportation from one State to another, or that the common carrier should not transport the prostitute. To do so would be a plain attempt to regulate interstate commerce. (Leisy *v.* Hardin, 135 U. S., 100.) Where the subject upon which Congress can act in the exercise of the power to regulate commerce is local in its nature or sphere of operation, such as harbor pilotage, the construction of bridges over navigable rivers, the erection of wharves, piers, and docks, which properly can be regulated only by special provision adapted to their localities, the State can act until Congress interferes and supersedes its authority. Where, however, the subject is national in its character, and demands and requires uniform regulation, and affects all the States, such as transportation between the States, including the importation from one State to another, Congress alone can act on it and provide the needed regulation. (Bowman *v.* Chicago & N. W. R. Co., 125 U. S., 465, 507.)

The rule just stated with reference to the transportation of property of course applies to the transportation of persons. The subject-matter of the legislation being, therefore, one over which the States have no control, it must be, as pointed out above, within the domain of proper federal legislation.

HISTORY OF THE DEVELOPMENT OF THE LAW.

The history of the development of the law forbidding the importation of alien women for purposes of prostitution is as follows:

The first provision relating to this subject was contained in the act of March 3, 1875 (18 Stat. L., 477; also 1 U. S. Comp. Stat., pp. 1286–1287), as follows:

SEC. 3. That the importation into the United States of women for the purposes of prostitution is hereby forbidden; and all contracts and agreements in relation thereto, made in advance or in pursuance of such illegal importation and purposes, are hereby declared void; and whoever shall knowingly and willfully import, or cause any importation of, women into the United States for the purposes of prostitution, or shall knowingly or willfully hold, or attempt to hold, any woman to such purposes, in pursuance of such illegal importation and contract or agreement, shall be deemed guilty of a felony, and, on conviction thereof, shall be imprisoned not exceeding five years and pay a fine not exceeding five thousand dollars.

Section 5 of the same act also contained the following:

That it shall be unlawful for aliens of the following classes to immigrate into the United States, namely, * * * women "imported for the purposes of prostitution."

The foregoing provision was superseded by section 3 of the act of March 3, 1903, entitled "An act to regulate the immigration of aliens into the United States" (32 Stat. L., 1213; also 1905 Suppl. to U. S. Comp. Stat., p. 276), which provides as follows:

That the importation into the United States of any woman or girl for the purposes of prostitution is hereby forbidden; and whoever shall import or attempt to import any woman or girl into the United States for the purposes of prostitution, or shall hold or attempt to hold, any woman or girl for such purposes in pursuance of such illegal importation shall be deemed guilty of a felony, and, on conviction thereof, shall be imprisoned not less than one nor more than five years and pay a fine not exceeding five thousand dollars.

It is to be observed that the provision in question underwent several important changes in the reenactment, as follows:

First. The old act covered the importation only of "any woman." The new act was extended to cover "any woman or girl."

Second. The clause in the old act declaring void contracts or agreements in relation to importing women for the purposes of prostitution was omitted in the new act.

Third. The old act used the language "knowingly and willfully" import and "knowingly and willfully" hold, or attempt to hold, any person, in pursuance of such illegal importation, etc. The new act eliminated the "knowingly and willfully" and made it an offense to import or to hold or attempt to hold any person in pursuance of such illegal importation.

Fourth. The penalty in each act was the same.

Both of the foregoing provisions were superseded by the act of February 20, 1907, entitled: "An act to regulate the immigration of aliens into the United States." (34 Stat. L., 898; 1907 Suppl. U. S. Comp. Stat., 392), as follows:

SEC. 3. That the importation into the United States of any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import, into the United States, any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, or whoever shall hold or attempt to hold any alien woman or girl for any such purpose in pursuance of such illegal

importation, or whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall, in every such case, be deemed guilty of a felony, and on conviction thereof be imprisoned not more than five years and pay a fine of not more than five thousand dollars; and any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States and shall be deported as provided by sections twenty and twenty-one of this act.

The changes introduced into the new provision, worthy of note, are as follows:

First. The new law forbade the importation of any alien woman or girl for the purpose of prostitution, and added the clause "or for any other immoral purpose."

Second. The new law added the words "directly or indirectly" in the clause "and whoever shall, directly or indirectly, import, or attempt to import," etc.

Third. The new law added the following important and also absolutely new provision: "Or whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States."

Fourth. The new law added to the section express authorization for the deportation of any alien woman or girl, in the following language:

Any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States and shall be deported as provided by sections twenty and twenty-one of this act.

SUPREME COURT DECISION CONSTRUING SECTION 3 OF THE ACT OF FEBRUARY 20, 1907.

Section 3 of the act of February 20, 1907, has received the consideration of the Supreme Court in two cases.

In the first case, that of the United States *v.* John Bitty (208 U. S., 393), the Supreme Court held that a foreign woman being brought to the United States as the personal, private mistress of a man living here was being imported "for other immoral purposes," and that, therefore, the importer was subject to the penalty of the statute and the woman to deportation.

This decision is not pertinent to the phase of the subject under discussion, and is mentioned only in passing.

The second case was that of Joseph Keller *v.* United States (213 U. S., 138). In the Keller case the Supreme Court was called to pass squarely upon the constitutionality of that portion of the provision in question which made it an offense to harbor or maintain for the purposes of prostitution any alien woman or girl within three years of her entry into the United States. The exact language of the provision in question is as follows:

Or whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall, in every such case, be deemed guilty of a felony, etc.

The opinion of the court (attached hereto as Appendix C) was delivered by Mr. Justice Brewer. Mr. Justice Holmes delivered a dissenting opinion (attached hereto as Appendix D), which was concurred in by Justices Harlan and Moody.

The case was a typical case of "harboring" exclusively. The uncontradicted testimony was to the effect that the woman, Irene Bodi, came to this country in November, 1905; that she remained in New York until October, 1907; then came to Chicago and went into a house of prostitution at South Chicago, which the defendants purchased in November, 1907, finding the woman then in the house; that she had been in the business of a prostitute for only a few months prior to the trial of the case, in October, 1908, and that the defendants did not know her until November, 1907.

The question of the power of Congress to enact a law for the punishment of anyone "harboring" an alien woman within three years of her arrival, regardless of whether or not she was a prostitute voluntarily or had entered that state against her will, was squarely presented by the facts in the case. The court held that Congress was without power to pass such a law, its position appearing from the statement contained in the following paragraph from the opinion of the court:

> While the keeping of a house of ill fame is offensive to the moral sense, yet that fact must not close the eye to the question whether the power to punish therefor is delegated to Congress or is reserved to the State. Jurisdiction over such an offense comes within the accepted definition of the police power. Speaking generally, that power is reserved to the States, for there is in the Constitution no grant thereof to Congress.

Bearing in mind the facts in this case—namely, that so far as appeared in the case presented, the defendants had nothing whatever to do with the importation of the woman in question; that so far as they were concerned she was not in a house of ill fame against her will; and that she was an inmate of the house when the establishment was purchased as a going concern—the following suggestions of the court contained in the opinion with reference to the conclusion the court might have reached had the facts been different, are important: For instance, the court says, page 144:

> It is unnecessary to determine how far Congress may go in legislating with respect to the conduct of an alien while residing here, for there is no charge against one; nor to prescribe the extent of its power in punishing wrongs done to an alien, for there is neither charge nor proof of any such wrong. So far as the statute or the indictment requires, or the testimony shows, she was voluntarily living the life of a prostitute, and was only furnished a place by the defendants to follow her degraded life.

See also on page 147, the court says:

> The question is, therefore, whether there is any authority conferred upon Congress by which this particular portion of the statute can be sustained. By section 2 of article 2 of the Constitution power is given to the President, by and with the advice and consent of the Senate, to make treaties, but there is no suggestion in the record or in the briefs of a treaty with the King of Hungary under which this legislation can be supported.

The Government stated in its brief these two propositions:

> The clause in question should be held valid because it relates to and materially affects the conditions upon which an alien female may be permitted to remain in this country, and the grounds which warrant her exclusion. * * *
>
> The validity of the provision in question should be determined from its general effect upon the importation and exclusion of aliens.

The court then, without stating whether or not either of these propositions was well taken, dismissed them with the statement that "the act charged has no significance in either direction."

In considering the decision of the Supreme Court in the Keller case attention is especially called to the fact that in the opinion the court made the following suggestions:

> By section 2 of article 2, of the Constitution, power is given to the President, by and with the advice and consent of the Senate, to make treaties, but there is no suggestion in the record or in the briefs of a treaty with the King of Hungary under which this legislation can be supported.

It is manifest that this is a most pregnant suggestion. A showing that the legislation in question was supported by a treaty could not be made at that time, however, for the reason that at the time of the enactment of the legislation the United States was not a party to the international agreement covering the subject. In fact, this Government did not adhere to the international agreement until a date subsequent to the commission of the offense charged against Keller.

In this connection the chronology of events is important. The existing statute on the subject of the importation of alien women for immoral purposes is contained in section 3 of the act approved February 20, 1907. The alleged illegal act of which the defendant stood convicted was the harboring of an alien woman on June 1, 1908. The United States did not become a party to the international agreement for the repression of the trade in white women until June 15, 1908, at which time this Government adhered to the agreement by virtue of a proclamation issued by President Roosevelt. It appears, therefore, that the statute in question became a law, and the offense involved was committed, previous to the date on which this Government became a party to the international agreement.

So far as I have been able to ascertain Congress has never passed any legislation to insure the carrying out of the provisions of the treaty in question.

The following clearly appears from an analysis of the Supreme Court decision above mentioned:

First. That Congress may properly enact legislation affecting the conduct of an alien while residing here for a period of at least two or three years after the alien's arrival.

Second. That Congress may provide for the punishment of wrongs done to an alien during the probationary period—that is to say, the Supreme Court intimates very broadly that Congress has the power to enact a law making it an offense to "harbor" for immoral purposes, by force or against her will, an alien woman or girl within the limited period referred to.

Third. That in the carrying out of a treaty obligation Congress has the authority to pass an act making it an offense to harbor an alien woman or girl for immoral purposes, even in the absence of a showing that force or restraint is used—that is to say, in the decision above referred to the Supreme Court suggests that a different conclusion might have been reached under the very clause then under consideration had it appeared that the provision in question was the carrying out of a treaty agreement.

EXISTING LAWS.

Section 3 of the act of February 20, 1907 (34 Stat., 899; also 1907 Suppl. U. S. Comp. Stat., p. 392), is as follows:

NOTE.—The italic portion of the following section is the portion which was held unconstitutional by the Supreme Court in the Keller case:

That the importation into the United States of any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import, into the United States, any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, or whoever shall hold or attempt to hold any alien woman or girl for any such purpose in pursuance of such illegal importation, *or whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose any alien woman or girl, within three years after she shall have entered the United States*, shall, in every such case, be deemed guilty of a felony, and on conviction thereof be imprisoned not more than five years and pay a fine of not more than five thousand dollars; and any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States and shall be deported as provided by sections twenty and twenty-one of this act.

Section 2 of the same act provides as follows:

That the following classes of aliens shall be excluded from admission into the United States; * * * prostitutes, or women or girls coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who procure or attempt to bring in prostitutes or women or girls for the purpose of prostitution or for any other immoral purpose; * * *.

"THE WHITE SLAVE TRADE."

A material portion of the legislation suggested and proposed is necessary to meet conditions which have arisen within the past few years. The legislation is needed to put a stop to a villainous interstate and international traffic in women and girls. The legislation is not needed or intended as an aid to the States in the exercise of their police powers in the suppression or regulation of immorality in general. It does not attempt to regulate the practice of voluntary prostitution, but aims solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution.

The evil, as a present day existing evil of widespread dimensions which has arisen, has been given careful attention by the representatives of most of the civilized nations of the world, and has been made the subject of an international agreement. Thousands of public-spirited citizens have combined in various national and state organizations for the purpose of lending their aid in its suppression. The white-slave trade has been so prevalent that prosecuting officers, both state and federal, even under inadequate and insufficient laws, have been able to secure many notable convictions. It is an evil which many state legislatures have attempted to regulate within the past two or three years by means of the enactment of state statutes. Inasmuch, however, as the traffic involves mainly the transportation of women and girls from the country districts to the centers of population and their importation from foreign nations the evil is one

which can not be met comprehensively and effectively otherwise than by the enactment of federal laws.

Investigations conducted by government agents disclose the fact that a national and international traffic exists in the buying, selling, and exploitation of women and young girls for immoral purposes. This traffic has come to be known the world over as "the white-slave trade." It is referred to by the Paris conference as "the trade in white women."

There are few who really understand the true significance of the term "white-slave trade." Most of those who have given only a casual thought to the subject have the impression that women who lead immoral lives in public houses are there voluntarily, either because they are attracted by the excitement of such a life or because they have found it an easy way of earning a living. In many cases such is not the fact. The results of careful investigation into this subject disclose the fact that the inmates of many houses of ill fame are made up largely of women and girls whose original entry into a life of immorality was brought about by men who are in the business of procuring women for that purpose—men whose sole means of livelihood is the money received from the sale and exploitation of women who, by means of force and restraint, compel their victims to practice prostitution. These investigations have disclosed the further fact that these women are practically slaves in the true sense of the word; that many of them are kept in houses of ill fame against their will; and that force, if necessary, is used to deprive them of their liberty.

The characteristic which distinguishes "the white-slave trade" from immorality in general is that the women who are the victims of the traffic are unwillingly forced to practice prostitution. The term "white slave" includes only those women and girls who are literally slaves—those women who are owned and held as property and chattels—whose lives are lives of involuntary servitude; those who practice prostitution as a result of the activities of the procurer, and who, for a considerable period at least, continue to lead their degraded lives because of the power exercised over them by their owners. In short, the white-slave trade may be said to be the business of securing white women and girls and of selling them outright, or of exploiting them for immoral purposes. Its victims are those women and girls who, if given a fair chance, would, in all human probability, have been good wives and mothers and useful citizens.

The preamble of an existing international agreement on this subject states that the several governments

> being desirous to assure to women who have attained their majority and are subjected to deception or constraint, as well as minor women and girls, an efficacious protection against the criminal traffic known under the name of trade in white women ("traite des blanches"), have resolved to conclude an arrangement with a view to concert proper measures to attain this purpose.

It is the purpose of the proposed laws, in so far as it may be possible for Congress to do so, to protect women and girls against this criminal traffic by providing for the punishment of those engaged in that traffic and by regulations established by the act.

Extensive investigation by government commissions and prosecuting officers in various parts of the country disclose the fact that in many cases involving women and girls imported into this country,

and those transported from one State to another, the procurers resort to all of the means and devices known to the criminal classes to accomplish their purposes. Liquor, trickery, deceit, fraud, and the use of force are resorted to by the procurer to place the girl under his power. In some cases, those who have been induced to come to the large cities are first introduced to the house of prostitution under the influence of liquor; in others, the procurer enters into a pretended marriage with his victim; in many cases involving the importation of women and girls from abroad and their transportation from one State to another the inducement is the promise of legitimate employment with handsome compensation. Hundreds of men in large cities live from the earnings of the victims of the white slave trade, and in many instances the more extensive of international procurers live in affluence. The books kept by a notorious importer of French girls, who was arrested in Chicago a few months ago, disclosed his earnings for the year previous to his arrest, largely from his importation and wholly from his exploitation of girls, to have been more than $102,000.

The investigations into this subject conclusively show the fact that for some time after they are first unwillingly forced to take up a life of prostitution many of the victims would at once abandon it were it possible for them to do so. The facts are that in order to insure her continuance in the degraded life, to which she has unwillingly been forced to submit, the procurer has resort to physical violence and the maintenance of a system of surveillance which makes her, to all intents and purposes, a prisoner. Obviously the portions of the act which require the proprietor of a house of ill fame to report to the federal authorities concerning the arrival in the establishment of an alien woman or girl would, at least so far as concerns aliens, make unlawful detention practically impossible.

The national and international importance of suppressing this criminal traffic is clearly shown by reference to the treaty, the preamble of which is given above, and reports of governmental officers and others on the subject.

The Secretary of Commerce and Labor, in his annual report for 1908, page 18, refers to the matter in the following terms:

> It is highly necessary that this diabolical traffic, which has attained international proportions, should be dealt with in a manner adequate to compass its suppression. No punishment is too severe to inflict upon the procurers in this vile traffic.

The act of February 20, 1907 (sec. 29), created an immigration commission, the membership of which was to consist of three Senators, three Members of the House of Representatives, and three persons to be appointed by the President of the United States. In a preliminary report submitted February 27, 1909 (Doc. 1489), the commission says:

> The commission has made an extensive investigation into the question of the importation and harboring of women for immoral purposes. The results show that many women are being regularly imported under conditions which often amount to absolute slavery.
>
> * * * * * * *
>
> It is believed that as a result of this investigation the commission will be able to make recommendations which will put a very decided check upon this horrible traffic, if, indeed, it will not practically break it up entirely.

THE TRAFFIC IS SYSTEMATIC AND EXTENSIVE.

Governmental investigations which have been conducted disclose the fact that the importation of women and girls from foreign countries has been systematic and continuous, and has not been limited to isolated and accidental cases. The facts in connection with investigations conducted by the district attorney at Chicago may be taken as typical of the situation in many other cities.

At the time of the arrest of several notorious French importers in Chicago, a large amount of correspondence and other documentary evidence fell into the hands of the authorities. This evidence showed beyond a reasonable doubt that there was in existence an organized system, or syndicate, having for its purpose the importation of women from foreign countries to Chicago and other cities in the United States for immoral purposes. This syndicate had headquarters and distributing centers in New York, Chicago, Omaha, Denver, San Francisco, Los Angeles, Seattle, and Nome, Alaska.

It is conservatively estimated, from an examination of the data and information at hand, that the syndicate has imported annually during the preceding eight or ten years on an average of about 2,000 women—largely French. It also appears that the syndicate regularly sent agents to Europe to procure girls, at stated prices, to be brought to the United States, where they were placed at the disposal of the keepers of houses of prostitution. The usual method employed in evading the immigration officers at the ports of entry was to pass the women as the wives or sisters of the procurers with whom they arrived.

One of the chief members of this syndicate was the Frenchman Alphonse Dufaur, who was the defendant in six indictments, in the Chicago district, charging him with harboring alien women in violation of the existing law. Dufaur and his wife subsequently forfeited bonds in the sum of $25,000 and became fugitives from justice.

Another active importer and procurer was Henry Lair, who operated establishments in Chicago and San Francisco. One of Lair's agents was a man named Louis Paint, who, some time ago, was convicted of importing in New York, and who is now serving a sentence of four years in the penitentiary at Atlanta, Ga., for importing women for Lair. On the recent trial of Lair, in Chicago, Paint testified that he had been given $800 by Lair and told to go to Paris for the purpose of procuring two girls for Lair's establishment in Chicago. Lair was convicted and sentenced by Judge Landis to serve two years at hard labor in the penitentiary at Fort Leavenworth and to pay a fine of $2,500.

Various arrests have been made in the Chicago district which disclose the existence of a traffic in girls from Hungary, Sweden, Norway, Denmark, Great Britain, and other countries.

In this connection it is of interest to note the profits realized by those engaged in the importation of alien women for the purpose of prostitution. For this purpose the information in the possession of the Government, as the result of prosecution against the French procurer Dufaur, which is definite and accurate, may be taken as typical of the remunerative character of the traffic. The books of account kept by Dufaur show that his income, from his establishment in Chicago, realized largely as a result of his success as an importer,

was, for the twelve months immediately preceding his arrest, upwards of $102,000. These books also show that during the month of May, previous to his arrest, the earnings of one girl, a recent importation, were $723. In almost every instance which has come to the attention of the authorities the girls who were imported from France by the French syndicate were compelled to turn over every day to the proprietor of the establishment in which they were detained all their earnings. They were usually allowed only enough to purchase the clothing necessary to make them attractive to frequenters of the place.

INTERNATIONAL AGREEMENT FOR THE REPRESSION OF THE TRADE IN WHITE WOMEN.

A project of arrangement for the suppression of the white slave traffic was, on July 25, 1902, adopted for submission to their respective governments by the delegates of various powers represented at the Paris conference for the repression of the trade in white women.

The stipulations of this project of arrangement were confirmed by preliminary agreement signed at Paris, May 18, 1904, by the Governments of Germany, Belgium, Denmark, Spain, France, Great Britain, Italy, the Netherlands, Portugal, Russia, Sweden, Norway, and the Swiss Federal Council.

By its resolution of March 1, 1905, the Senate of the United States advised and consented to the adhesion by the United States to the said project of arrangement, and therefore, on June 6, 1908, the President announced the adherence on the part of this Government to the project, and this adherence was on June 15, 1908, covered by the proclamation of the President. This treaty was published in pamphlet form by the State Department as Treaty Series, No. 496, and a complete copy is attached hereto as Appendix B. The preamble of this agreement recites that the various governments, being desirous to assure to women who have attained their majority, and are subjected to deception or constraint, as well as minor women and girls, an efficacious protection against the criminal traffic known under the name of trade in white women ("traite des blanches"), have resolved to conclude an arrangement with a view to concert proper measures to attain this purpose.

The terms of the agreement as set forth in the various articles are as follows:

ARTICLE 1. Each of the Contracting Governments agrees to establish or designate an authority who will be directed to centralize all information concerning the procuration of women or girls both in a view to their debauchery in a foreign country; that authority shall have the right to correspond directly with the similar service established in each of the other Contracting States.

ART. 2. Each of the Governments agrees to exercise a supervision for the purpose to find out, particularly in the stations, harbours of embarkation, and on the journey, the conductors of women or girls intended for debauchery. Instructions shall be sent for that purpose to the officials or to any other qualified persons, in order to procure, within the limits of the laws, all information of a nature to discover a criminal traffic.

The arrival of persons appearing evidently to be the authors, the accomplices, or the victims of such a traffic will be notified, in each case, either to the authorities of the place of destination or to the interested diplomatic or consular agents, or to any other competent authorities.

ART. 3. The Governments agree to receive, in each case within the limits of the laws, the declarations of women and girls of foreign nationality who sur-

render themselves to prostitution, with a view to establish their identity and their civil status and to ascertain who has induced them to leave their country. The information received will be communicated to the authorities of the country of origin of the said women or girls, with a view to their eventual return.

The Governments agree, within the limits of the laws and as far as possible, to confide temporarily and with a view to their eventual return, the victims of criminal traffic, when they are without any resources, to some institutions of public or private charity or to private individuals furnishing the necessary guaranties.

The Governments agree also, within the limits of the laws, to return to their country of origin, those women or girls who ask their return or who may be claimed by persons having authority over them. Return will be made only after reaching an understanding as to their identity and nationality, as well as to the place and date of their arrival at the frontiers. Each of the contracting parties will facilitate the transit on his territory.

The correspondence relative to the return will be made, as far as possible, through the direct channel.

ART. 4. In case the woman or girl to be sent back can not pay herself the expenses of her transportation and she has neither husband nor relations nor guardian to pay for her the expenses occasioned by her return, they shall be borne by the country or the territory of which she resides as far as the nearest frontier or port of embarkation in the direction of the country of origin, and by the country of origin for the remainder.

ART. 5. The provisions of the above articles 3 and 4 shall not infringe upon the provisions of special conventions which may exist between the contracting Governments.

ART. 6. The contracting Governments agree, within the limits of the laws, to exercise, as far as possible, a supervision over the bureaus or agencies which occupy themselves with finding places for women or girls in foreign countries.

Articles 7, 8, and 9 provide for the adhesion of the nonsignatory States, that the present arrangement shall take effect six months after the date of the exchange of the ratifications, and for the formalities attending the ratification and exchange of the agreement, respectively.

DOCUMENTS SUBMITTED HEREWITH.

For convenience of reference there are attached hereto the following documents:

Appendix A.—Copy of agreement between the United States and other powers for the repression of the trade in white women.

Appendix B.—Copy of the opinion of the Supreme Court of the United States in the Keller case.

Appendix C.—Copy of dissenting opinion of the Supreme Court of the United States in the Keller case.

Appendix D.—Extract from statement of the Immigration Commission, issued February 27, 1909.

Appendix E.—Extract from annual report of the Secretary of Commerce and Labor, 1908.

Appendix F.—Extract from annual report of the Commissioner-General of Immigration for year ended June 30, 1907.

Appendix G.—Extract from annual report of the Commissioner-General of Immigration for year ended June 30, 1908.

APPENDIX A.

[Extract from the Congressional Record, 58th Congress, Senate, vol. 39, March 1, 1905.]

REPRESSION OF THE TRADE IN WHITE WOMEN.

The injunction of secrecy was removed March 1, 1905, from projects of a convention and an additional arrangement adopted on July 25, 1902, by the delegates of the various powers represented at the Paris conference for the repression of the trade in white women (traite des blanches).

APPENDIX A.—*Agreement between the United States and other powers for the repression of the trade in white women.*

[Signed at Paris, May 18, 1904. Ratification advised by the Senate, March 1, 1905. Adhered to by the President, June 6, 1908. Proclaimed, June 15, 1908.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a project of arrangement for the suppression of the white slave traffic was, on July 25, 1902, adopted for submission to their respective Governments by the delegates of various Powers represented at the Paris Conference for the repression of the trade in white women;

And whereas, in pursuance of Article VII of the said project of arrangement, the Government of the United States was, on August 18, 1902, invited by the Government of the French Republic to adhere thereto;

And whereas the Senate of the United States, by its Resolution of March 1, 1905 (two-thirds of the Senators present concurring therein), did advise and consent to the adhesion by the United States to the said project of arrangement;

And whereas the stipulations of the said project of arrangement were, word for word, and without change, confirmed by a formal agreement, signed at Paris on May 18, 1904, by the Governments of Germany, Belgium, Denmark, Spain, France, Great Britain, Italy, the Netherlands, Portugal, Russia, Sweden, Norway, and the Swiss Federal Council, a true copy of which agreement, in the French language, is hereto attached;

And whereas the ratifications by the said Governments of the said agreement have been duly deposited with the Government of the French Republic; and the said agreement has been adhered to by the Governments of Austria-Hungary and Brazil;

And whereas the President of the United States of America, in pursuance of the aforesaid advice and consent of the Senate, did, on the 6th day of June, 1908, declare that the United States adheres to the said agreement in confirmation of the said project of arrangement:

Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said agreement to be made public, to the end that the same, and every article and clause thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this 15th day of June, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States of America the one hundred and thirty-second.

[SEAL.] THEODORE ROOSEVELT.

By the President:
ROBERT BACON,
Acting Secretary of State.

THE AGREEMENT.

His Majesty the German Emperor, King of Prussia, in the name of the German Empire; His Majesty the King of the Belgians; His Majesty the King of Denmark; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Diminions beyond the Seas, Emperor of India; His Majesty the King of Italy; Her Majesty the Queen of the Netherlands; His Majesty the King of Portugal and of the Algarves; His Majesty the Emperor of All the Russias; His Majesty the King of Sweden and Norway, and the Swiss Federal Council, being desirous to assure to women who have attained their majority and are subjected to deception or constraint, as well as minor women and girls, an efficacious protection against the criminal traffic known under the name of trade in white women ("*Traite des Blanches*"), have resolved to conclude

an arrangement with a view to concert proper measures to attain this purpose and have appointed as their plenipotentiaries, that is to say:

The President of the French Republic, His Excellency M. th. Delcasse, deputy, minister for foreign affairs of the French Republic;

His Majesty the German Emperor, King of Prussia, His Serene Highness Prince Radolin, his ambassador extraordinary.

His Majesty the King of the Belgians, M. A. Leghait, his envoy extraordinary and minister plenipotentiary to the President of the French Republic;

His Majesty the King of Denmark, Count F. Reventlow, his envoy extraordinary and minister plenipotentiary to the President of the French Republic;

His Majesty the King of Spain, His Excellency M. F. de Leon y Castillo, Marquis del Muni, his ambassador extraordinary and plenipotentiary to the President of the French Republic;

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British dominions beyond the seas, Emperor of India, His Excellency Sir E. Monson, his ambassador extraordinary and plenipotentiary to the President of the French Republic;

His Majesty the King of Italy, His Excellency Count Tornielli Brusati di Vergano, his ambassador extraordinary and plenipotentiary to the President of the French Republic;

Her Majesty the Queen of the Netherlands, M. le Chevalier de Stuers, her envoy extraordinary and minister plenipotentiary to the President of the French Republic;

His Majesty the King of Portugal and of the Algarves, M. T. de Souza-Roza, his envoy extraordinary and minister plenipotentiary to the President of the French Republic;

His Majesty the Emperor of all the Russias, his excellency M. de Nelidow, his ambassador extraordinary and plenipotentiary to the President of the French Republic;

His Majesty the King of Sweden and Norway: for Sweden and for Norway, M. Akerman, his envoy extraordinary and minister plenipotentiary to the President of the French Republic;

And the Swiss Federal Council, M. Charles Edouard Lardy, envoy extraordinary and minister plenipotentiary of the Swiss Confederation to the President of the French Republic;

Who, having exchanged their full powers, found in good and due form, have agreed upon the following provisions:

ARTICLE 1. Each of the contracting Governments agrees to establish or designate an authority who will be directed to centralize all information concerning the procuration of women or girls both in a view to their debauchery in a foreign country; that authority shall have the right to correspond directly with the similar service established in each of the other contracting States.

ART. 2. Each of the Governments agrees to exercise a supervision for the purpose to find out, particularly in the stations, harbours of embarkation, and on the journey, the conductors of women or girls intended for debauchery. Instructions shall be sent for that purpose to the officials or to any other qualified persons, in order to procure, within the limits of the laws, all information of a nature to discover a criminal traffic.

The arrival of persons appearing evidently to be the authors, the accomplices, or the victims of such a traffic will be notified, in each case, either to the authorities of the place of destination or to the interested diplomatic or consular agents, or to any other competent authorities.

ART. 3. The governments agree to receive, in each case, within the limits of the laws, the declarations of women and girls of foreign nationality who surrender themselves to prostitution, with a view to establish their identity and their civil status and to ascertain who has induced them to leave their country. The information received will be communicated to the authorities of the country of origin of the said women or girls, with a view to their eventual return.

The Governments agree, within the limits of the laws and as far as possible, to confide temporarily and with a view to their eventual return, the victims of criminal traffic, when they are without any resources, to some institutions of public or private charity or to private individuals furnishing the necessary guaranties.

The Governments agree also, within the limits of the laws, to return to their country of origin those of those women or girls who ask their return or who may be claimed by persons having authority over them. Return will be made only after reaching an understanding as to their identity and nationality, as well as to the place and date of their arrival at the frontiers. Each of the Contracting Parties will facilitate the transit on his territory.

The correspondence relative to the return will be made, as far as possible, through the direct channel.

ART. 4. In case the woman or girl to be sent back can not pay herself the expenses of her transportation, and she has neither husband nor relations nor guardian to pay for her the expenses occasioned by her return, they shall be borne by the country on the territory of which she resides as far as the nearest frontier or port of embarkation in the direction of the country of origin, and by the country of origin for the remainder.

ART. 5. The provisions of the above articles 3 and 4 shall not infringe upon the provisions of special conventions which may exist between the contracting governments.

ART. 6. The contracting Governments agree, within the limits of the laws, to exercise, as far as possible, a supervision over the bureaux or agencies which occupy themselves with finding places for women or girls in foreign countries.

ART. 7. The non-signatory States are admitted to adhere to the present arrangement. For this purpose they shall notify their intention, through the diplomatic channel, to the French Government, which shall inform all the contracting States.

ART. 8. The present arrangement shall take effect six months after the date of the exchange of ratifications. In case one of the contracting parties shall denounce it, that denunciation shall take effect only as regards that party and then twelve months only from the date of the day of the said denunciation.

ART. 9. The present arrangement shall be ratified and the ratifications shall be exchanged at Paris as soon as possible.

In faith whereof the respective plenipotentiaries have signed the present agreement and thereunto affixed their seals.

Done at Paris, the 18th May, 1904, in single copy, which shall be deposited in the archives of the Ministry of Foreign Affairs of the French Republic, and of which one copy, certified correct, shall be sent to each contracting party.

APPENDIX B.

IN THE SUPREME COURT OF THE UNITED STATES.

Keller *v.* The United States. (213 U. S. Reports, 138.)

(Decided April 5, 1909.)

Section 3 of the act of Congress of February 20, 1907 (34 Stat. 898, 899), entitled "An act to regulate the immigration of aliens into the United States," reads as follows:

SEC. 3. That the importation into the United States of any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import, into the United States, any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, or whoever shall hold or attempt to hold any alien woman or girl for any such purpose in pursuance of such illegal importation, or *whoever shall keep, maintain, control, support, or harbor, in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall, in every such case, be deemed guilty of a felony, and on conviction thereof be imprisoned not more than five years and pay a fine of not more than five thousand dollars;* and any alien woman or girl who shall be found an inmate of a house of prostitution, or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States, and shall be deported as provided by sections twenty and twenty-one of this act.

The plaintiffs in error were indicted for a violation of this section, the charge against them being based upon that portion of the section which is in italics, and in terms that they "willfully and knowingly did keep, maintain, control, support, and harbor in their certain house of prostitution" (describing it) "for the purpose of prostitution a certain alien woman, to wit, Irene Bodi," who was, as they well knew, a subject of the King of Hungary, who had entered the United States within three years. A trial was had upon this indictment; the plaintiffs in error were convicted and sentenced to the penitentiary for eighteen months.

Mr. Justice Brewer delivered the opinion of the court.

The single question is one of constitutionality. Has Congress power to punish the offense charged, or is jurisdiction thereover solely with the State? Undoubtedly, as held, "Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in; to establish regulations for sending out of the country such aliens as have entered in violation of law, and to commit the enforcement of such conditions and regulations to executive officers." (Turner *v.* Williams, 194 U. S., 279, 289. See also Fong Yue Ting *v.* United States, 149 U. S., 698, 708; Head Money Cases, 112 U. S., 580, 591; Lees *v.* United States, 150 U. S., 476, 480; United States *v.* Bitty, 208 U. S., 393.)

It is unnecessary to determine how far Congress may go in legislating with respect to the conduct of an alien while residing here, for there is no charge against one; nor to prescribe the extent of its power in punishing wrongs done to an alien, for there is neither charge nor proof of any such wrong. So far as the statute or the indictment requires or the testimony shows she was voluntarily living the life of a prostitute, and was only furnished a place by the defendants to follow her degraded life. While the keeping of a house of ill-fame is offensive to the moral sense, yet that fact must not close the eye to the question whether the power to punish therefor is delegated to Congress or is reserved to the State. Jurisdiction over such an offense comes within the accepted definition of the police power. Speaking generally, that power is reserved to the States, for there is in the Constitution no grant thereof to Congress.

In Patterson *v.* Kentucky (97 U. S., 501, 503) is this declaration:

"In the American constitutional system," says Mr. Cooley, "the power to establish the ordinary regulations of police has been left with the individual States, and can not be assumed by the National Government." (Cooley Const. Lim., 574.) While it is confessedly difficult to mark the precise boundaries of that power, or to indicate, by any general rule, the exact limitations which the States must observe in its exercise, the existence of such a power in the States has been uniformly recognized in this court. (Gibbons *v.* Ogden, 9 Wheat., 1; License cases, 5 How., 504; Gilman *v.* Philadelphia, 3 Wall., 713; Henderson et al. *v.* Mayor of the City of New York et al., 92 U. S., 259; Railroad Company *v.* Husen, 95 Id., 465; Beer Company *v.* Massachusetts, supra, p. 25.) It is embraced in what Mr. Chief Justice Marshall in Gibbons *v.* Ogden calls that "immense mass of legislation," which can be most advantageously exercised by the States, and over which the national authorities can not assume supervision or control.

And in Barbier *v.* Connolly (113 U. S., 27, 31) it is said:

But neither the amendment—broad and comprehensive as it is—nor any other amendment was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity.

Further, as the rule of construction, Chief Justice Marshall, speaking for the court in the great case of McCollough *v.* State of Maryland (4 Wheat., 316, 405), declares:

This Government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise, as long as our system shall exist.

In Houston *v.* Moore (5 Wheat., 1, 48) Mr. Justice Story says:

Nor ought any power to be sought, much less to be adjudged, in favor of the United States, unless it be clearly within the reach of its constitutional charter. Sitting here, we are not at liberty to add one jot of power to the National Government beyond what the people have granted by the Constitution.

(Article 10 of Amendments; City of New York *v.* Miln, 11 Pet., 102, 133; License Cases, 5 How., 504, 608, 630; United States *v.* Dewitt, 9 Wall., 41, 44; Patterson *v.* Kentucky, 97 U. S., 501, 503; Barbier *v.* Connolly, 113 U. S., 27, 31; in re Rahrer, 140 U. S., 545, 555; United States *v.* Knight, 156 U. S., 1, 11; Cooley's Constitutional Limitations, 574.)

Doubtless it not infrequently happens that the same act may be referable to the power of the State as well as to that of Congress. If there be collision in such a case, the superior authority of Congress prevails. As said in City of New York *v.* Miln (11 Pet., 102, 137):

> From this it appears that whilst a State is acting within the legitimate scope of its power as to the end to be attained, it may use whatsoever means, being appropriate to that end, it may think fit; although they may be the same, or so nearly the same, as scarcely to be distinguishable from those adopted by Congress acting under a different power, subject only, say the court, to this limitation, that in the event of collision the law of the State must yield to the law of Congress. The court must be understood, of course, as meaning that the law of Congress is passed upon a subject within the sphere of its power.

In Gulf, Colorado & Santa Fe Railway *v.* Hafley (158 U. S., 98, 104) the rule is stated in these words:

> Generally it may be said in respect to laws of this character that, though resting upon the police power of the State, they must yield whenever Congress, in the exercise of the powers granted to it, legislates upon the precise subject-matter, for that power, like all other reserved powers of the States, is subordinate to those in terms conferred by the Constitution upon the nation. "No urgency for its use can authorize a State to exercise it in regard to a subject-matter which has been confided exclusively to the discretion of Congress by the Constitution." (Henderson *v.* New York, 92 U. S., 259, 271.) "Definitions of the police power must, however, be taken subject to the condition that the State can not, in its exercise, for any purpose whatever, encroach upon the powers of the General Government, or rights granted or secured by the supreme law of the land." (New Orleans Gas Co. *v.* Louisiana Light Co., 115 U. S., 650, 661.) "While it may be a police power in the sense that all provisions for the health, comfort, and security of the citizens are police regulations, and an exercise of the police power, it has been said more than once in this court that, where such powers are so exercised as to come within the domain of federal authority as defined by the Constitution, the latter must prevail." (Morgan *v.* Louisiana, 118 U. S., 455, 468.)

See also Lottery case (188 U. S., 321).

The question is therefore whether there is any authority conferred upon Congress by which this particular portion of the statute can be sustained. By section 2 of Article II of the Constitution, power is given to the President, by and with the advice and consent of the Senate, to make treaties; but there is no suggestion in the record or in the briefs of a treaty with the King of Hungary under which this legislation can be supported.

The general power which exists in the nation to control the coming in or removal of aliens is relied upon, the Government stating in its brief these two propositions:

> The clause in question should be held valid because it relates to and materially affects the conditions upon which an alien female may be permitted to remain in this country, and the grounds which warrant her exclusion.
>
> * * * * * * *
>
> The validity of the provision in question should be determined from its general effect upon the importation and exclusion of aliens.

But it is sufficient to say that the act charged has no significance in either direction.

As to the suggestion that Congress has power to punish one assisting in the importation of a prostitute, it is enough to say that the statute does not include such a charge; the indictment does not make it, and the testimony shows, without any contradiction, that the woman, Irene Bodi, came to this country in November, 1905; that

she remained in New York until October, 1907; then came to Chicago and went into the house of prostitution which the defendants purchased in November, 1907, finding the woman then in the house; that she had been in the business of a prostitute only about ten or eleven months prior to the trial of the case in October, 1908, and that the defendants did not know her until November, 1907. In view of these facts the question of the power of Congress to punish those who assist in the importation of a prostitute is entirely immaterial.

The act charged is only one included in the great mass of personal dealings with aliens. It is her own character and conduct which determines the question of exclusion or removal. The acts of others may be evidence of her business and character. But it does not follow that Congress has the power to punish those whose acts furnish evidence from which the Government may determine the question of her expulsion. Every possible dealing of any citizen with the alien may have more or less induced her coming. But can it be within the power of Congress to control all the dealings of our citizens with resident aliens? If that be possible, the door is open to the assumption by the National Government of an almost unlimited body of legislation. By the census of 1900 the population of the United States between the oceans was, in round numbers, 76,000,000. Of these 10,000,000 were of foreign birth, and 16,000,000 more were of foreign parentage. Doubtless some have become citizens by naturalization, but certainly scattered through the country there are millions of aliens. If the contention of the Government be sound, whatever may have been done in the past, however little this field of legislation may have been entered upon, the power of Congress is broad enough to take cognizance of all dealings of citizens with aliens. That there is a moral consideration in the special facts of this case, that the act charged is within the scope of the police power, is immaterial, for, as stated, there is in the Constitution no grant to Congress of the police power. And the legislation must stand or fall according to the determination of the question of the power of Congress to control generally dealings of citizens with aliens.

In other words, an immense body of legislation, which heretofore has been recognized as peculiarly within the jurisdiction of the States, may be taken by Congress away from them. Although Congress has not largely entered into this field of legislation, it may do so, if it has the power. Then we should be brought face to face with such a change in the internal conditions of this country as was never dreamed of by the framers of the Constitution. While the acts of Congress are to be liberally construed in order to enable it to carry into effect the powers conferred, it is equally true that prohibitions and limitations upon those powers should also be fairly and reasonably enforced. Fairbank *v.* United States (181 U. S., 283). To exaggerate in the one direction and restrict in the other will tend to substitute one consolidated government for the present Federal system. We should never forget the declaration in Texas *v.* White (7 Wall., 700, 725), that "The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

The judgments are reversed, and the cases remanded to the district court of the United States for the northern district of Illinois with instructions to quash the indictment.

APPENDIX C.

SUPREME COURT OF THE UNITED STATES.

Nos. 653 and 654. October Term, 1908.

653. JOSEPH KELLER, PLAINTIFF IN ERROR, v. THE UNITED STATES. 654. LOUIS ULLMAN, PLAINTIFF IN ERROR, v. THE UNITED STATES.	In error to the district court of the United States for the northern district of Illinois.

(April 5, 1909.)

Mr. Justice HOLMES, dissenting.

For the purpose of excluding those who unlawfully enter this country Congress has power to retain control over aliens long enough to make sure of the facts. (Yamatava *v.* Fisher (*Japanese Immigrant Case*), 189 U. S., 86.) To this end it may make their admission conditional for three years. (Pearson *v.* Williams, 202 U. S., 281.) If the ground of exclusion is their calling, practice of it within a short time after arrival is or may be made evidence of what it was when they came in. Such retrospective presumptions are not always contrary to experience or unknown to the law. (Bailey *v.* Alabama, 211 U. S., 452, 454.) If a woman were found living in a house of prostitution within a week of her arrival, no one, I suppose, would doubt that it tended to show that she was in the business when she arrived. But how far back such an inference shall reach is a question of degree like most of the questions of life. And while a period of three years seems to be long, I am not prepared to say, against the judgment of Congress, that it is too long.

The statute does not state the legal theory upon which it was enacted. If the ground is that which I have suggested, it is fair to observe that the presumption that it creates is not open to rebuttal. I should be prepared to accept even that, however, in view of the difficulty of proof in such cases. Statutes of which the justification must be the same are familiar in the States. For instance, one creating the offense of being present when gaming implements are found (Commonwealth *v.* Smith, 166 Mass., 370, 375, 376), or punishing the sale of intoxicating liquors without regard to knowledge of their intoxicating quality (Commonwealth *v.* Hallett, 103 Mass., 452), or throwing upon a seducer the risk of the woman turning out to be married or under a certain age. (Commonwealth *v.* Elwell, 2 Met., 190. Reg. *v.* Prince, L. R. 2 C. C., 154.)

It is true that in such instances the legislature has power to change the substantive law of crimes, and it has been thought that when it is said to create a conclusive presumption as to a really disputable fact, the proper mode of stating what it does, at least as a general rule, is to say that it has changed the substantive law. (2 Wigmore, Ev. secs. 1353 et seq.) This may be admitted without denying that considerations of evidence are what lead to the change. And if it should be thought more philosophical to express this law in substantive terms, I think that Congress may require, as a condition of

the right to remain, good behavior for a certain time in matters deemed by it important to the public welfare and of a kind that indicates a preexisting habit that would have excluded the party if it had been known. Therefore I am of opinion that it is within the power of Congress to order the deportation of a woman found practicing prostitution within three years.

If Congress can forbid the entry and order the subsequent deportation of professional prostitutes it can punish those who cooperate in their fraudulent entry. "If Congress has power to exclude such laborers * * * it has the power to punish any who assist in their introduction." That was a point decided in Lees *v.* United States (150 U. S., 476, 480). The same power must exist as to cooperation in an equally unlawful stay. The indictment sets forth the facts that constitute such cooperation and need not allege the conclusion of law. On the principle of the cases last cited, in order to make its prohibition effective, the law can throw the burden of finding out the fact and date of a prostitute's arrival from another country upon those who harbor her for a purpose that presumably they know in any event to be contrary to law. Therefore, while I have admitted that the time fixed seems to me to be long, I can see no other constitutional objection to the act, and, as I have said, I think that that one ought not to prevail.

Mr. Justice Harlan and Mr. Justice Moody concur in this dissent.

True copy.

Test:

_____.

Clerk Supreme Court, United States.

[Extract from statement relative to the work and expenditures of the Immigration Commission, issued February 27, 1909, as Document No. 1489.]

Appendix D.—*Importation for immoral purposes.*

The commission has made an extensive investigation into the question of the importation and harboring of women for immoral purposes. The results show that many women are being regularly imported under conditions which often amount to absolute slavery. Until the commission began its inquiry there is every reason to believe that the practice was rapidly on the increase and was very profitable to its promoters.

Since the beginning of the investigation, and to a considerable extent as the results of its inquiries and the evidence which it was able to put into the hands of the United States district attorney and police officials in various places, there has been a noteworthy attack upon this business, which has resulted very decidedly in its decrease.

The United States district attorney of the northern district of Illinois writes that he had endeavored at various times to make headway against the traffic with little success. He adds:

> After making some ineffectual attempts to locate these parties, I reached the conclusion that without some specially trained force it would be practically impossible, with the regular force of the office, to secure successful results. It was at this stage of the proceedings that you * * * advised me that * * * the agents of the commission, who were at that time collecting data and information in this district, would turn the same over to us to use in the prosecution.

As a result of this information many raids and arrests were made and prosecutions instituted. The district attorney adds:

From what I know of the situation, I am convinced that the prosecutions have had a most salutary effect, at least in this district, on a large number of offenders who, a few months ago, were actively engaged in the importation of alien women and girls for immoral purposes. Some are serving sentences of imprisonment, others have forfeited bail and fled, and reliable information which comes to me is to the effect that no inconsiderable number have become so frightened at the prosecutions that they have abandoned the practice, left the city, and gone into other business. * * *

I think I may safely say that the prosecutions we have conducted have resulted in effectually breaking up the traffic of alien girls, at least in this district and for the time being. * * *

I have always felt that without the aid which the commission was able to give us it would have been impossible for us to have accomplished what has been done.

The district attorney sends a list, which will be printed later, of the results up to February 3, 1909. This shows many convictions, indictments, some forfeitures of bail, with one or two cases still pending.

One interesting fact is that the bail forfeited and paid in the case of one man and his wife arrested for the importation and harboring of alien women for immoral purposes was considerably more than enough to pay the entire expense of this investigation into the white-slave traffic in all parts of the United States; that on the subject of alien criminals; that on immigrant aid societies; and that on alien seamen and deserters.

It is believed that as a result of this investigation the commission will be able to make recommendations which will put a very decided check upon this horrible traffic, if, indeed, it will not practically break it up entirely.

This investigation was practically completed February 1, entirely concluded during that month, and a report prepared for consideration by the commission.

APPENDIX E.—*The white-slave traffic.*

[Extract from the Annual Report of the Secretary of Commerce and Labor, 1908.]

An international project of arrangement for the suppression of the white-slave traffic was, on July 25, 1902, adopted for submission to their respective governments by the delegates of the various powers represented at the Paris conference, which arrangement was confirmed by formal agreement signed at Paris, on May 18, 1904, by the Governments of Germany, Belgium, Denmark, Spain, France, Great Britain, Italy, the Netherlands, Portugal, Russia, Sweden, Norway, and the Swiss Federal Council. This arrangement, after having been duly submitted to the Senate, was proclaimed by the President June 15, 1908, and is printed in full in the report of the Commissioner-General of Immigration. The purpose of the arrangement is set forth in the preamble, which states that the several governments, "being desirous to assure to women who have attained their majority and are subjected to deception or constraint, as well as minor women and girls, an efficacious protection against the criminal traffic known under the name of 'trade in white women' ('traite des blanches'), have resolved to conclude an arrangement with a view to concert proper measures to attain this purpose.

In addition to the amendment above suggested, to penalize the importation of women and girls for immoral purposes irrespective of whether they are aliens or citizens, it would be highly advantageous in the endeavor to break up the white-slave traffic to make it a felony or misdemeanor punishable by imprisonment for an alien once deported from the United States as a procurer of prostitutes

or as a prostitute to again return to the United States, and the alien to be deported at the expiration of the term of imprisonment.

It is highly necessary that this diabolical traffic, which has attained international proportions, should be dealt with in a manner adequate to compass its suppression. No punishment is too severe to inflict upon the procurers in this vile traffic. Under the terms of the arrangement, I have designated, as the authority which will be directed to centralize all information provided for therein, the Commissioner-General of Immigration, with a right to correspond directly with similar services established in each of the other contracting States.

In administering the law the department is frequently embarrassed by the fact that an alien woman of the immoral class refused admission at a port or arrested within the country for deportation may, by marrying an American citizen, invest herself with his status and defeat the purpose of the law. To overcome this difficulty it will be necessary to add to the naturalization act a provision that the marriage of an alien woman to an American citizen shall not be regarded as conferring upon such woman the rights and privileges of citizenship in this country unless she is a person of good moral character.

Appendix F.

[Extract from the Annual Report of the Commissioner-General of Immigration for the fiscal year ended June 30, 1907.]

A subject closely related to the foregoing is the importation of women and girls for immoral purposes. This was among the first of the immigration evils to engage the attention of Congress, a section of the act of 1875 being devoted thereto. Its importance has increased in due proportion to the growth of immigration itself, and no small part of the duties of the service has consisted in trying to prevent the importation and to effect the deportation of such persons and their procurers. There can be no denying the assertion that apparently, and on the suface at least, there has been in recent years a marked decrease in this nefarious business, so appropriately termed the "white-slave traffic." Reports reach the bureau from all quarters, foreign and domestic, indicating that the combined efforts of those abroad and in this country interested in wiping out the disgraceful blot upon our Christian civilization have accomplished considerable. But the bureau is satisfied, from the experience of its field officers, that much still remains to be done. The number of foreign prostitutes and procurers or importers of prostitutes being detected and deported (see Table III A, p. 12) furnishes incontrovertible evidence on this point. Some especially good work has been done in several of the Western States, notably Montana. In this respect, also, the new immigration act (secs. 2 and 3) is a decided improvement over the old, and places in the hands of the bureau a weapon with which it hopes to make an energetic and effective fight. The bureau believes that this provision for the cure of existing evils should be supplemented by a preventive measure which it here suggests: A number of thoroughly qualified women, equipped with a sufficient knowledge of foreign languages, should be selected and

appointed for service on the vessels of several of the larger steamship lines, their duty being to travel from foreign ports on the vessels with the alien women, mixing freely with them, forming their acquaintance, and gathering every available bit of information concerning their antecedents and their purposes and hopes in coming to America. Thus could be gained, it is believed, often accurately and in detail, data which could be placed before boards of special inquiry upon arrival at the United States ports, enabling such boards to pass intelligently upon the admissibility of the alien women.

Of course, the greatest care would have to be exercised in selecting women for positions of such responsibility. Doubtless the steamship lines would consent to such an arrangement, and the cost involved would be inconsiderable as against the importance of the object in view. Little or nothing, comparatively, can be accomplished by an inspection of, and intermixture with, the female steerage passengers after the vessels reach quarantine stations on our coasts—the period from that time till landing is too limited—but under the arrangement suggested the time would be ample for women possessing the requisite qualifications of mind, heart, and temperament to ascertain much of interest regarding the passengers among whom the would mingle.

Appendix G.

[Extract from Annual Report of the Commissioner-General of Immigration for the fiscal year ended June 30, 1908.]

Reference to Tables III and IIIA will show that during the past year there has been great activity on the part of the bureau in the suppression of the importation of alien women for purposes of prostitution or "other immoral purposes." The first table shows that of prostitutes and women coming for other immoral purposes 124 have been rejected at the ports, and of procurers of prostitutes 43. Table IIIA shows that 44 alien prostitutes and 2 procurers have been deported from the country, and the bureau's files show that 14 procurers and keepers of houses of ill fame have been convicted and sentenced to terms of imprisonment and fines, the sentence in 4 cases being imprisonment for from one to five years and in the remaining 10 both imprisonment and fine, ranging from six months to eighteen months and from $50 to $1,000. The law now in force is a great improvement over former immigration laws, both in its provisions with respect to the exclusion and expulsion of immoral alien women and in the penalties it attaches to importing or harboring alien prostitutes or alien women similarly immoral, or placing in houses of ill fame alien women who have entered this country with the intent to lead lives of virtue. Not only is the law, by the terms in which enacted, made much broader than heretofore, but, fortunately, the first case brought in the courts to test its scope was carried up to the Supreme Court, and a decision sustaining the Government's contention for a construction of the broadest possible kind has been handed down. Reference is had to the case of United States *v.* John Bitty (208 U. S., 393), in which the Supreme Court held that a foreign woman being brought to the United States as the personal, private mistress of a man living here was being imported "for other

immoral purposes," and that therefore the importer was subject to the penalty of the statute and the woman to deportation.

Early in the year a circular of special instructions with respect to the arrest and deportation of immoral alien women was issued, and a systematic campaign having that object in view has been inaugurated. Already, as shown by the figures given, good results are being attained, and it is confidently expected that much more will be accomplished hereafter. One of the greatest difficulties encountered is the fact that most women brought into this country as "white slaves" are carefully instructed by their masters to make no damaging admissions with regard to the date of their arrival or the name under which the ocean passage was booked, and to claim always that the date of arrival was more than three years previously, three years being the limit of time fixed in the law within which deportation may be effected. To partly overcome this plan to block ascertainment of the actual date of arrival of such persons and disprove their fictitious claims, the department felt justified in holding that, if an immoral woman refuses to furnish the correct date of arrival and the name under which she traveled, it will be assumed for administrative purposes that she arrived within the three-year period, and unless she disproves such presumption of fact deportation will follow. This is having a good effect. What will do more than anything else to break up the nefarious barter in humanity will be securing, in the large centers particularly, a few such sentences in the cases of the procurers as that given David Rokoff by District Judge Morris, of Baltimore. Rokoff was shown to be an outrageous violator of the law regarding procuring and holding alien women to prostitution, and the judge, promptly upon the return of a verdict of guilty, pronounced a sentence of five years' imprisonment in the penitentiary.

Several of the immigration officials who were detailed abroad during the year reported that the white-slave traffic was flourishing between European and North and South American countries, and tha it was a matter of regret that the United States had not yet become a party to the agreement between the leading European countries for cooperation in the breaking up of the traffic. On June 6, 1908, however, the President, on behalf of the United States, proclaimed said agreement, the text of which is as follows, the countries signatory being Great Britain, France, Germany, Belgium, Denmark, Spain, Italy, the Netherlands, Portugal, Russia, Sweden, Norway, and Switzerland.

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